

20. DRUG-FREE WORKPLACE

BASIC REQUIREMENT

FTA grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program.

AREAS TO BE EXAMINED

1. *Written Policy*
2. *Ongoing, Drug-free Workplace Awareness Program*

3. *Notification of a Drug Statute Violation*

REFERENCES

1. [49 CFR Part 32](#) “Governmentwide Requirements for a Drug-free Workplace (Grants)”
2. [41 USC Sections 701 et seq.](#), Drug-Free Workplace Act (DFWA) of 1988

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a written policy as prescribed in the Drug-Free Workplace Act (DFWA)? Has the grantee distributed it to all transit-related employees? Does the policy notify employees that:*

- *The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace?*
- *They must abide by the terms of the policy statement as a condition of employment?*
- *If convicted of a drug statute violation occurring in the workplace, they are to report such to the employer in writing no later than five days after such a conviction?*

EXPLANATION

The grantee is required to have and distribute to transit related employees a written policy that states that the workplace is drug-free and that it prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. The grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment. The grantee is required to inform all employees that, if convicted of a drug statute violation that occurred in the workplace, they are to report it to the employer in writing no later than five calendar days after such a conviction. The DFWA policy can be in the FTA Drug and Alcohol Testing Policy as long as it is clearly differentiated and its applicability is extended to all employees, not just safety-sensitive employees.

The DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the grant, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants, or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces.

These requirements should not be confused with the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REFERENCE

49 CFR 32.200; 205; and 210

SOURCES OF INFORMATION

A copy of the grantee's drug-free workplace policy will be reviewed.

DETERMINATION

The grantee is deficient if it does not have a written policy.

The grantee is deficient if it has not provided written notification to its employees, has not notified all transit related employees, has not informed employees that adherence to the policy is a condition of employment, has not informed employees of the criminal drug statute violation time frames, or has other omissions in its policy.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office a written policy that includes all required elements along with documentation that the amended policy has been distributed to all grant-related employees.

2. *Has the grantee established an ongoing drug-free awareness program? How has the grantee informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs?*

EXPLANATION

In addition to establishing and maintaining a drug-free workplace environment, the grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on an employee assistance program to provide drug-free awareness information. This procedure is acceptable,

provided the material includes a drug-free workplace message.

REFERENCE

49 CFR 32.200; 215; and 220

SOURCES OF INFORMATION

The reviewer will examine the written policy, employee handbooks, brochures, posters and other information on bulletin boards, employee assistance program information, and other material distributed to employees.

DETERMINATION

The grantee is deficient if it does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, the opportunities for assistance, and the penalties. The grantee is deficient if it has provided such information in the past but has not provided information on a consistent basis.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office evidence that it has implemented an ongoing drug-free awareness program and informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

3. *Has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? Did the grantee provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?*

EXPLANATION

When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REFERENCE

49 CFR 32.225

SOURCES OF INFORMATION

At the desk review, the reviewer will examine files to determine if any report of a conviction has been made by an employee to the grantee and subsequently by the grantee to FTA and follow up with the grantee during the site visit.

DETERMINATION

The grantee is deficient if it has reported a conviction or has taken personnel actions, but not within the appropriate time frames. The grantee is deficient if it reports that a conviction has occurred but did not notify FTA or take appropriate personnel actions.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to report to the FTA regional office outstanding convictions and/or take appropriate personnel actions and to develop procedures to do so in the future within the required timeframes.